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SYNOPSIS OF CHARITABLE REGISTRATION AND SOLICITATION STATUTES

In 1999, the 82nd General Assembly of the State of Arkansas passed Act 1198 of 1999. Act 1198 repeals Ark. Code Ann. § 4-28-401 *et seq.* and § 17-41-101 *et seq.* and sets forth registration and reporting requirements for charitable organizations, paid solicitors, paid telemarketers, and fund-raising counsel.

CHARITABLE ORGANIZATIONS

Ark. Code Ann. § 4-28-401 *et seq.* provides that no charitable organization, unless otherwise exempt, shall solicit contributions in this state without first registering with and providing certain information to the Attorney General. Exemptions are discussed below. Registration forms are available from the Attorney General. **There is no fee for registering a charitable organization in Arkansas.**

Annual Financial Reports and Fiscal Records

- Annual Report Forms or copies of all tax-or-information returns must be filed on or before May 15 of each year. If a charitable organization maintains its books other than on a calendar-year basis, it may upon application to the Attorney General, be permitted to file its tax-or-information return within six (6) months after the close of its fiscal year. If a charitable organization files a form 990EZ in lieu of an annual report, it must also submit an *Arkansas Attachment to form 990EZ* provided by the Attorney General.
- A charitable organization with gross revenue in excess of five hundred thousand dollars (\$500,000) in any fiscal year must include an audit report of a certified public accountant with its submission of the tax records or annual report.
- Charities that are required to register with the Attorney General but are not required to file an information-or-tax return with the Internal Revenue Service must in lieu of said information-or-tax returns, submit an annual report on forms to be provided by the Attorney General.
- Every charitable organization must keep a full and true record in such form as will enable the charitable organization to accurately provide accurate information. All records shall be open to inspection and copying by the Attorney General at all times. The charitable organization shall retain records for no less than three (3) years after the end of the fiscal year to which they relate.

Filing of Contracts by Charitable Organizations

- Each contract between a charitable organization and fund-raising counsel must be in writing and filed with the Attorney General prior to the performance of any material services. The contract must contain specific provisions, including the particular services the fund-raising counsel is to provide and the manner of compensation.
- Each contract between a charitable organization and a commercial co-venturer must be in writing and filed with the Attorney General prior to the commencement of the charitable sales promotion. A commercial co-venturer is any person, primarily engaged in trade or commerce, who advertises that the purchase of his goods, services, entertainment, or any other thing of value, normally sold without a charitable appeal, will benefit a charitable organization during the sales promotion.

Non-resident Charitable Organizations

Non-resident charitable organizations must comply with all applicable registration and reporting requirements and also must file an irrevocable consent for service of process providing that service upon the Attorney General shall be as valid and binding as if service had been made on the non-resident organization itself.

EXEMPTIONS

The following charitable promotions and charitable organizations are not subject to the provisions of Ark. Code Ann. § 4-28-401 *et seq.*

- Religious Organizations - any bona fide, duly constituted, religious entity that satisfies each of the following criteria:
 - the entity is exempt from taxation pursuant to the Internal Revenue Code; *and*
 - no part of the entity's net income inures to the direct benefit of any individual;
- Educational Institutions - any parent-teacher association or educational institution, the curricula of which, in whole or in part, are registered or approved by any state or the United States, either directly or by acceptance of accreditation by an accrediting body;
- Political Candidates and Organizations - any candidate for national, state, or local elective office or a political party or other committee required to file information with the Federal Election Commission or any state election commission or its equivalent agency;
- Governmental Organizations - any department branch, or other instrumentality of federal, state, or local government;
- Non-Profit Hospitals - any non-profit hospital licensed by this state or any other state;
- Any charitable organization that does not intend to solicit and receive, and does not actually receive, contributions in excess of twenty-five thousand dollars (\$25,000) during a calendar year if all of its functions, including its fund-raising functions, are carried on by persons who are unpaid for their services, and provided that no part of its assets or income inures to the benefit of or is paid to any officer or member;
- Any person who solicits solely for the benefit of exempt organizations.

PAID SOLICITORS, PROFESSIONAL TELEMARKETERS, & FUND-RAISING COUNSEL

Paid Solicitors

All paid solicitors for any charitable organization must register with the Attorney General before engaging in any fund-raising activities. A paid solicitor is a person who, for compensation, performs any service for a charitable organization; or in connection with contributions solicited by the person or by any other person he employs, procures, or engages to solicit for compensation; or a person who at any time has custody or control of contributions. A paid solicitor must:

- Complete an application under oath on a form available from the Attorney General;
- Pay an annual fee of \$200.00;
- File a \$10,000 bond acceptable to the Attorney General along with the completed application. This bond is to run to the Attorney General and any other person who might have a cause of action arising out of the paid solicitor's conduct of a solicitation;
- Renew its registration with the Attorney General on an annual basis;
- File with the Attorney General, in no less than fifteen (15) days prior to the commencement of each solicitation campaign, a copy of the contract. This must be in writing, clearly stating the respective obligations of the paid solicitor and the charitable organization, including the compensation or remuneration to be paid by the charitable organization to the paid solicitor. The contract must also provide for delivery of the names and addresses of all persons making contributions and the amounts thereof to the charitable organization;
- File a financial report for a campaign with the Attorney General no more than ninety (90) days after a solicitation campaign has been completed, and on the anniversary of the commencement of any solicitation campaign that lasts more than one (1) year. The financial report must include gross revenue and an itemization of all expenditures incurred and the amount of money ultimately remitted to the charity, absent payment of any fees or costs to the paid solicitor. The report shall be completed on a

form prescribed by the Attorney General. An authorized official of the paid solicitor and two (2) authorized officials of the charitable organization shall sign such report, and they shall certify, under oath, that such report is true and complete to the best of their knowledge;

- Maintain during each solicitation campaign (and for not less than three (3) years after the completion of each such campaign) the following records, which shall be available to the Attorney General for inspection upon request:
 - ✍ The name and residence of each employee, agent, or other person involved in the solicitation;
 - ✍ Records of all income received and expenses incurred in the course of the solicitation campaign; and
 - ✍ The names and addresses of all persons making contributions and the amounts thereof.
- If a paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall maintain, for not less than three (3) years after the completion of the event, the following records, which shall be available to the Attorney General for inspection upon request: the name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.
- Each contribution in the control or custody of the paid solicitor shall, in its entirety and within five (5) days of its receipt, be deposited, maintained, and administered in an account in a bank or other federally insured financial institution, which shall be in the name of the charitable organization and over which that charitable organization shall have sole control over all withdrawals.
- Any material change in any information filed with the Attorney General pursuant to this section shall be reported in writing by the paid solicitor to the Attorney General not more than thirty (30) days after the change occurs.
- All records shall be open to inspection, examination, and copying during usual and customary business hours by the Attorney General or other authorized agencies.
- All non-resident paid solicitors must file, along with the application, an irrevocable consent for service of process, providing that service on the Attorney General is as valid and binding as service on the paid solicitor. [The same consent for any non-resident charitable organization for which solicitations are made.] If the paid solicitor employs non-resident professional telemarketers, consents must be filed for them as well. Forms are available from the Attorney General.

Professional Telemarketers

"Professional telemarketer" means any person employed or retained for compensation by a paid solicitor to solicit contributions in this state for charitable purposes. This includes any individual or business organization that has an agreement with a charitable organization to assist or conduct fund-raising promotions. Professional telemarketers must:

- Be employed in a principal-agent relationship by a paid solicitor registered pursuant to Ark. Code Ann. § 4-28-401 *et seq.*;
- Complete an application under oath on a form available from the Attorney General within seventy-two (72) hours after accepting such employment;
- Pay an annual fee in the sum of ten dollars (\$10.00);
- Renew the registration with the Attorney General on an annual basis.

Fund-Raising Counsel

"Fund-raising counsel" means any person, who for a flat fixed fee or fixed hourly rate, under a written agreement, plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization, but who actually solicits no contributions as a part of the services. Fund-raising counsel does not receive or control funds or assets solicited for charitable purposes, nor does counsel procure or employ any compensated person to do so. Fund-raising counsel must:

- Complete an application under oath on a form available from the Attorney General;
- Pay an annual fee of \$100.00;
- Renew its registration with the Attorney General on an annual basis.

PROHIBITED ACTS & DECEPTIVE PRACTICES

- Any misrepresentation, either express or implied, during the course of soliciting funds for a charitable organization;
- Any charitable organization engaging in any financial transaction that knowingly jeopardizes, or interferes with, the ability of the charitable organization to accomplish its charitable purpose;
- Knowingly using or exploiting the fact of registration, so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;
- Knowingly misrepresenting that any other person sponsors or endorses a solicitation;
- Knowingly using either the name of a charitable organization or displaying any emblem, device, or printed matter belonging to, or associated with, a charitable organization without the express written permission of the charitable organization;
- Any charitable organization knowingly using a name, which is the same as or confusingly similar to, the name of another charitable organization unless the latter organization shall consent in writing to its use;
- Any charitable organization representing itself as being associated with another charitable organization without the express written acknowledgment and endorsement of the other charitable organization;
- Knowingly making any false or misleading statements on any document required to be filed with the Attorney General;
- Failing to substantially comply with the requirements of Ark. Code Ann. § 4-28-401 *et seq.*;
- Any charitable organization using the services of an unregistered paid solicitor, who is required to register pursuant to this Act;
- Any paid solicitor soliciting contributions from citizens or entities located in this state on behalf of an unregistered charitable organization;
- Failing to disclose, if asked, the percentage of funds raised, which will be going to the solicitor and what percentage will be applied to the charitable purpose;
- Prior to accepting any funds, failing to identify the person responsible for the solicitation, as well as whether the solicitor is being paid for his efforts;
- Representing that tickets to an event are to be donated for use by another, unless the paid solicitor has first obtained a commitment, in writing, from a charitable organization stating that it will accept donated tickets and specifying the number of tickets, which it is to accept and provided that no more contributions for donated tickets shall be solicited than the number of ticket commitments received from the charitable organization. Donated tickets must be used in accordance with the representations made to the consumer at the time of solicitation.

The Deceptive Trade Practices Act contains the law prohibiting misrepresentations for all solicitations. It should be studied carefully and complied with scrupulously by all paid solicitors, professional telemarketers, fund-raising counsel, and charitable organizations.